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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,907	07/15/2005	Frances Ann Ellis	J3680(C)	9472

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UNILEVER PATENT GROUP  
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EXAMINER
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MAEWALL, SNIGDHA

ART UNIT	PAPER NUMBER
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1612

NOTIFICATION DATE	DELIVERY MODE
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11/25/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentgroupus@unilever.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/520,907	<b>Applicant(s)</b> ELLIS ET AL.	
	<b>Examiner</b> Snigdha Maewall	<b>Art Unit</b> 1612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-7, 9 and 10 is/are pending in the application.
- 4a) Of the above claim(s) 4, 8 and 11-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-7 and 9-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### **Summary**

1. Receipt of Applicant's arguments and amended claims filed on 09/08/09 is acknowledged.

(Note: Applicant's had elected the following species for prosecution)

3,3-dimethyl-1,2-butandiol.

Claim 8 has been cancelled.

Claims 11-14 remain withdrawn.

Claim 4 reads on non-elected species, therefore it is not included in the prosecution.

Claims **1-3, 5-7 and 9-10** are under prosecution on the merits and to the extent they read on the elected species.

Claim 1 has been amended.

***The following rejections are necessitated by claim amendments.***

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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3. Claims **1-3, 5-7 and 9-10** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 recites the limitation that the composition further comprises a betaine, it is not clear how betaine is different from the surfactants claimed in claim 1. It is not clear whether the surfactant claimed in claim 1 as amphoteric surfactant is betaine itself or any other surfactant, the metes and bounds of claim are not defined. Claim 1 recites the limitation 0 to 8% for co-surfactant, It is unclear whether the composition comprises co-surfactant or not. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-3, 5-7 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al. (US PG pub. 2004/0067209) in view of Michael et al. (WO-00/00164, presented in IDS).

Brown et al. disclose methods and compositions for regulating the melanin content of mammalian melanocytes regulating pigmentation in mammalian skin and hair by administering compounds such as diols and triols, see abstract. Brown et al.

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teaches the elected species as preferred ingredeint butanediol in paragraph [0172] on page 5.see 3,3-dimethyl-1,2-butandiol and also see table 5 on page 7.

In paragraph [0173], Brown et al. teach application of composition and methods in formulations such as shampoo. The dose regimen depends on severity of treatment required. Page 5, [0175].

Brown et al. does not teach the claimed surfactants.

Michael teaches a leave-on hair composition which contains a diol, abstract. The reference teaches on page 4, various diols that are included in the composition. The amount of active ingredient is from 0.015 to 20%, see abstract. The reference teaches polar solvent in the composition such as water, see page 3, last paragraph and page 5, first paragraph. The reference teaches various cosmetic and aesthetic ingredients used to provide acceptable benefits such as surfactants, anionic, amphoteric and non-ionic in the range of about 0.01% to about 5%, see page 5, under hair care ingredient. The reference teaches surfactants and betaine (amphoteric surfactant) , see examples. Anionic surfactant from about 0.01% to about 2% (sodium lauryl sulfate), and quaternary conditioning agents (cationic polymers disclosed in instant disclosure on page 10)) from less than 2% or 1 or 0.5%, see pages 6 and 15.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate known surfactants such as anionic, amphoteric and cationic polymer in the teachings of Brown et al. in order to provide better cosmetic and conditioning properties as it is held that generally, it is *prima facie* obvious to select a

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known material for incorporation into a composition, based on its recognized suitability for its intended use. See MPEP 2144.07. Thus one of ordinary would have envisaged preparing a shampoo composition comprising the claimed butanediol as taught by Brown et al. for hair treatment purposes and added the known surfactants as taught by Michael et al. and arrived at the instant invention with a reasonable expectation of success.

6. Claims 1-3, 5-7 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al. (US PG pub. 2004/0067209) in view of Patel et al. (USP 6,608,011 ).

Brown et al. disclose methods and compositions for regulating the melanin content of mammalian melanocytes regulating pigmentation in mammalian skin and hair by administering compounds such as diols and triols, see abstract. Brown teaches the elected species as preferred ingredeint butanediol in paragraph [0172] on page 5.see 3,3-dimethyl-1,2-butandiol and also see table 5 on page 7.

In paragraph [0173], Brown et al. teach application of composition and methods in formulations such as shampoo. The dose regimen depends on severity of treatment required. Page 5, paragraph [0175].

Brown et al. does not teach the claimed surfactants.

Patel et al. teach shampoo, a cleaning composition for personal care, see abstract. The reference teaches inclusion of known shampoo constituents in order to

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provide the desired properties, see column 8, lines 30-37. Table G teaches anionic surfactant ammonium lauryl sulfate, cocoamidopropyl betaine, an amphoteric surfactant and polyquaternium -6 a cationic polymer and water in the composition.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the known surfactants used to make shampoo such as anionic, amphoteric and cationic polymer in the teachings of Brown et al. in order to provide better conditioning properties motivated by Patel et al. Since Brown suggests teaches using the claimed butane diol for skin and hair treatment and suggests making shampoo formulation, one of ordinary would have had reasonable success in making a shampoo comprising the claimed butane diol as taught by Brown et al. and surfactant as taught by Patel et al.

### ***Response to Arguments***

7. Applicant's arguments with respect to claims 1-3, 5-7 and 9-10 have been considered but are moot in view of the new ground(s) of rejection.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Snigdha Maewall whose telephone number is (571)-272-6197. The examiner can normally be reached on Monday to Friday; 8:30 a.m. to 5:00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass can be reached on (571) 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-0580. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO



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Customer Service Representative or access to the automated information system, call  
800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Snigdha Maewall/

Examiner, Art Unit 1612

/Gollamudi S Kishore/

Primary Examiner, Art Unit 1612